

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALBERT B. ZUNIGA,

Petitioner,

v.

KING COUNTY SHERIFF'S
OFFICE,

Respondent.

CASE NO. C22-0048JLR

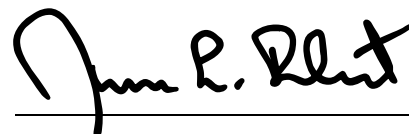
ORDER

Before the court is Petitioner Albert B. Zuniga's motion to withdraw his lawsuit, which the court construes as a motion to voluntarily dismiss this action pursuant to Federal Rule of Civil Procedure 41. (Mot. (Dkt. # 29).) Mr. Zuniga wishes to "withdraw his complaint," which he describes as one brought under 42 U.S.C. § 1983, in order "to fight another day." (*Id.* at 2.) As an initial matter, the court notes that Mr. Zuniga's characterization of this action as one brought under 42 U.S.C. § 1983 is incorrect. (*See id.* at 1.) The action before this court is a petition for a writ of habeas corpus against Respondent King County Sheriff's Office. (*See* Pet. (Dkt. # 11).) Mr. Zuniga has a

1 separately filed 42 U.S.C. § 1983 action pending before Judge Tana Lin, which has been
2 referred to Magistrate Judge S. Kate Vaughan. *See Zuniga v. Schenck*, No.
3 C22-0047TL-SKV (W.D. Wash.). If Mr. Zuniga seeks relief in that matter, he must
4 direct his request to Judge Lin and Magistrate Judge Vaughan, which he appears to have
5 done. *See Mot. to Withdraw Lawsuit, Zuniga*, No. C22-0047TL-SKV (Dkt. # 30).

6 To the extent Mr. Zuniga seeks to withdraw the habeas petition filed before this
7 court, the motion also fails. The court previously dismissed Mr. Zuniga's petition
8 without prejudice and without leave to amend (3/28/22 Order (Dkt. # 20) at 5; Judgment
9 (Dkt. # 21)), denied Mr. Zuniga a certificate of appealability, and directed the Clerk to
10 close this case (*see* 5/13/22 Order (Dkt. # 27)). Thus, there is no pending petition for Mr.
11 Zuniga to withdraw at this point. Additionally, it seems that Mr. Zuniga is merely
12 attempting to avoid the adverse consequences of the court's rulings in this matter (*see*
13 *generally* Mot.), which he may not do through a motion for voluntary dismissal, *see*
14 *Maxum Indem. Ins. Co. v. A-1 All Am. Roofing Co.*, 299 F. App'x 664, 666 (9th Cir.
15 2008) ("A district court may consider whether the plaintiff is requesting a voluntary
16 dismissal only to avoid a near-certain adverse ruling."). Accordingly, Mr. Zuniga's
17 motion to withdraw (Dkt. # 29) is DENIED. The Clerk is DIRECTED to send a copy of
18 this order to Mr. Zuniga.

19 Dated this 3rd day of August, 2022.

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22 JAMES L. ROBART
United States District Judge